**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**
**&**
**THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN**

**FRIDAY, THE 15TH JUNE 2007 / 25TH JYAISHTA 1929**

**RCRev..No. 184 of 2007()**
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**RCA.152/2000 of ADDL.DISTRICT COURT (ADHOC)-II, THALASSERY**
**RCP.67/1996 of MUNSIF COURT, KUTHUPARAMBA**
**.....**

**REVISION PETITIONER/APPELLANT/RESPONDENT/TENANT:**
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**KANNAPAN KANDY BHARATHAN,**
**S/O. KUNHIMANNAN, AGED 73 YEARS, BUSINESS,**
**RESIDING AT KUTHUPARAMBA AMSOM, NARAVOOR DESOM,**
**THALASSERY TALUK, KANNUR DISTRICT.**

**BY ADV. SRI.R.SURENDRAN**

**RESPONDENT: RESPONDENT/PETITIONER/LANDLORD:**
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**KARIYADAN NARAYANI, D/O.PYTHAL CHETTIAR,**
**AGED 78 YEARS, NO OCCUPATION, RESIDING AT**
**EDAKKAD AMSOM, KUTTIKAKAM DESOM, KANNUR TALUK,**
**KANNUR DISTRICT.**

**BY**

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 15/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**J.B.KOSHY & K.P.BALACHANDRAN, JJ.**

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**R.C.R.NO.184 OF 2007 ()**

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**Dated this the 15th day of June, 2007**

**O R D E R**

**KOSHY,J.**

Respondent landlord filed a petition for eviction under Sections 11(2), 11(3) and 11(4) of the Kerala Building (Lease and Rent Control) Act, 1965. The Rent Control court allowed the eviction under Section 11 (3), 11 (4)(v) of the Act. Since the arrears of rent was deposited application under Section 11(2)(b) was dismissed. The contention of the landlord was that she wants the building for conducting garment business to be conducted by his son, who was examined as PW2. The court found that need was genuine and bona fide. PW2 was 28 years at the time of issuing notice. The fact that he was not sitting idle and doing some business in some other place is not a ground for stating that the need is not bona fide. It was also found that tenant is not entitled to protection under 2nd proviso to Section 11(3). The appellate court also concurrently found

the same. After considering the evidence and after considering the Commission report, it was also found that the premises was closed down and was not opened for more than one year. Tenant contended that his daughter was hospitalised but the court noticed that if she was hospitalised, sufficient medical records could have been produced. But no evidence was produced to show that his daughter was hospitalised during the period. It was also contended that apart from the rice mill a copra mill was also there. Even though rice mill was not operating copra mill was operated and it was temporarily closed because of shortage of copra. That also cannot be accepted as even if there is shortage of copra, then copra will be available at higher prices and consequently price of the oil also become higher. Both courts are of the opinion that the establishment was closed for more than one year. These are the findings of facts concurrently found out by two courts. We see no ground to differ from the above.

2. Counsel for the petitioner submitted that at least some reasonable time may be allowed to vacate the building.

We are of the opinion that four months' time can be allowed to vacate the building, provided, he pays the arrears of rent as on 30.6.2007 within three weeks from today and files an affidavit before the Execution court within one month from today unconditionally undertaking that he will handover vacant possession of the building before the expiry of four months from today and will continue to pay monthly rents on the due dates itself till he vacates the premises. If the affidavit is not filed within the time fixed after paying the arrears as directed, respondent shall be free to execute the order on the expiry of the said one month. Accordingly this R.C.R. is dismissed with the above observations.

**J.B.KOSHY, JUDGE**

**K.P.BALACHANDRAN, JUDGE**

prp

**J.B.KOSHY & K.P.BALACHANDRAN, JJ.**

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**M.F.A.NO. OF 2006 ()**

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**J U D G M E N T**

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**8th June, 2007**